

VERMONT LABOR RELATIONS BOARD

DEPARTMENT OF PUBLIC SAFETY)	DOCKET NO. 81-22
PERSONNEL DESIGNATION DISPUTES)	DOCKET NO. 81-68

FINDINGS OF FACT, OPINION, AND ORDER

Statement of Case

On April 21, 1981, the Vermont State Employees' Association ("VSEA") filed a petition with the Vermont Labor Relations Board, disputing the designation by the Commissioner of Personnel of State Police Lieutenants of the Department of Public Safety as managerial employees. On September 24, 1981, Felix Sawicky, Public Safety Registration Unit Supervisor, filed a notice of dispute, contending the designation of his position as Non-Management should be changed to Supervisory. On October 9, 1981, VSEA disputed the designation of State Police Sergeants' positions in the Department of Public Safety as supervisory, contending they should be designated as State Police Unit positions.

These disputes were docketed under two separate case numbers and were consolidated for hearing.

Hearings were held February 25, 1982, and March 11, 1982, before the full Board at the Board hearing room in Montpelier. Michael R. Zimmerman, Staff Attorney, represented VSEA. Felix Sawicky appeared pro se. The State was represented by Scott Cameron, Assistant Attorney General. At the first hearing, VSEA amended its dispute relating to Lieutenants to indicate one of the Lieutenants was designated confidential and they disputed that designation. Also, on the first hearing day, VSEA made an oral motion to dismiss the proceedings on the grounds

the Board lacked jurisdiction to determine the disputed personnel designations. VSEA filed a memorandum in support of the motion March 10, 1982. Requested findings of fact and memoranda were filed by the VSEA and the State on April 1, 1982, and April 2, 1982, respectively.

FINDINGS OF FACT

1. The Commissioner of Personnel designated all but one State Police Lieutenant positions as managerial. The Internal Affairs Unit commander position was designated confidential.

2. The Commissioner of Personnel designated all State Police Sergeant positions as supervisory.

3. The Department of Public Safety ("Department") is headed by a commissioner.

4. Employees of the Department fall into two categories: 1) those who perform law enforcement duties - members of the Vermont State Police; and 2) civilian employees who do not perform law enforcement duties.

5. Only the Commissioner has the power to appoint, promote, transfer, discipline and discharge members of the State Police.

6. The hiring practice of the State Police is as follows: An applicant must first successfully complete a written examination, a physical agility test, a polygraph examination, and a psychological profile. Thereafter, the applicant appears before an oral board (generally consisting of Sergeants and Lieutenants), the members of which assign points to the recruit, and make comments about the applicant. Finally, the applicants' cumulative scores are sent to the Commissioner for his decision on which applicants will be hired.

7. Promotions to positions within the State Police are all from within the ranks of members. This differs from promotions in other departments of State government where promotions can be made from outside the promoting department.

8. The promotion policy of the Vermont State Police is as follows: Testing is divided into two parts - a written examination, and an oral board. On the written examination, each candidate is given a score, and then all candidates are assigned a "pecking order". The oral board scores the candidates on certain criteria. Each candidate is then given a total score, 60 percent based on the written exam, and 40 percent based on the oral board. The decision of which candidates should be promoted is the Commissioner's alone, and he need not, although he generally does, follow the "pecking order" established by the candidates' scores.

9. The Department of Public Safety is a quasi-military organization within which chain-of-command assumes great importance. The chain-of-command in the State Police runs from Trooper 2nd Class (at one end), through Trooper 1st Class, Senior Trooper, Corporal, Sergeant 2nd Class, Sergeant 1st Class, Lieutenant, Captain, and Major, to the Commissioner. Officers cannot set policy without clearing it through the chain-of-command, and written policy is made at the top of the chain, and promulgated downward through the chain. The chain-of-command system is a management device, resting on the principle of reserving effective decision-making authority at the level of Captain and above, rather than delegating authority down through the ranks. The uniqueness of this organizational structure when compared with other departments in State government is a key factor in labor-management relations.

10. One of the key management organizing principles of the State Police is that all members of the same rank are of equal authority, and each individual is expected to be able to perform the jobs of all individuals of that rank. Throughout a career in the Department, individuals are rotated from position to position within the same rank. From a management point of view, the rank of an individual, not position duties, are the main determining factor in placement of individuals in positions. The factor distinguishes the Department from any other department in State government. Under this structure, individuals within certain ranks have a community of interest and sense of identity given them by rank, rather than position.

11. The Department of Public Safety is organized into three divisions, each division headed by a Captain. The three Captains report to the Director of State Police (whose rank is Major). The Major reports directly to the Commissioner. The three divisions are 1) Field Force Division, 2) Criminal Division, and 3) Support Services Division. Besides the three divisions, the State Police also has an Internal Affairs Unit.

12. The Major, three Captains and seven Lieutenants are assigned to State Police Headquarters to be on the Headquarters Duty Roster. On weekends or holidays, the assigned Duty Officer assumes, in a limited way, the duties normally performed by one of the three Captains. If a serious crime occurs anywhere in the State, the assigned Duty Officer is contacted by telephone. If the assigned Duty Officer happens to be a Lieutenant, he telephones the appropriate Captain to apprise him of the situation, but does not exercise the authority of the Captain.

FIELD FORCE DIVISION

13. The Field Force Division is headed by a Commander, who is a Captain.

14. The Assistant Field Commander, a Lieutenant, reports to the Field Force Commander. The position involves performing research on equipment needs for the Field Force and supervising the Enforcement Coordinator, the Traffic Coordinator, and the Special Services Coordinator. Also, the incumbent supervises and trains the Department's 16-member Search and Rescue Team, a team trained in technical rescue and evacuation technique (Exhibit 17).

15. The Special Services Coordinator, a Sergeant, is responsible for the purchase, maintenance and availability of the Vehicle Fleet of the Department. He supervises one State Police Corporal and three civilian employees (one Motor Mechanic Supervisor and two mechanics) (Exhibit 23).

16. The Law Enforcement Coordinator, a Sergeant, is the direct supervisor of the Department's single dog trainer/handler. The position also involves supervising or selecting the supervisor for the weekend CRASH patrols consisting of eight to twelve law enforcement personnel. The incumbent performs duties of a supervisor if special details are required (Exhibit 25).

17. The Traffic Coordinator, a Sergeant, exercises direct supervision over 20 Traffic Control Team Officers, nine Tactical Support Team Members, occasionally supervises FAST and CRASH programs, and supervises the A-Troop as Troop Commander during weekends and holidays. As administrative

officer in charge of State Police Auxiliary programs, the coordinator is responsible for 110-140 auxiliary volunteers involved in the Snowmobile and Marine Enforcement programs. Responsibilities in this area include recruitment, training, and direction of auxiliaries, and recommending to the commissioner action based on complaints made against auxiliaries.

18. Within the Field Force Division, there are 11 stations (not including "outposts") located throughout the state. Those stations are grouped into four groups, called "troops", designated as Troop A, B, C, and D (Exhibit 1, pgs. 6-12).

19. Each troop is headed by a Troop Commander, which is a Lieutenant's position. Each Troop Commander reports directly to the Commander, Field Forces Division, bypassing the Assistant Field Force Commander.

20. Troop Commanders are responsible for all State Police services within the geographic areas of their respective troops. Under his command are Station Commanders (Sergeants), Patrol Commanders (Corporals), Troopers, and clerk-dispatchers.

21. Troop Commanders directly supervise Station Commanders, counseling them in the performance of their duties and conducting their performance evaluations.

22. The Troop Commander instructs subordinates in departmental policy and ensures Department policy is carried out, serving as a liason between Department headquarters and the station. The Troop Commander does not have much discretion in policy matters; there are extensive procedures for nearly all aspects of State Police work.

23. The Troop Commander conducts periodic informal inspections of all facilities, equipment, personnel, and administrative procedures within the Troop.

24. The Troop Commander has no control over or involvement in budgetary matters. A Commander cannot purchase anything without the approval of his superiors.

25. The management principle around which the Field Force is organized is that all service functions - budgetary, field supplies, equipment and the like - are not the responsibility of the Troop Commanders, but are provided by the Support Services Division or are responsibility of higher-ups. As a consequence of not having responsibility over service functions, the Troop Commanders' principal responsibilities involve managing personal relationships among subordinates and supervising scheduling and work assignments. The Troop Commanders' most difficult problems are frequently those involving resolution of family and job stresses of subordinates.

26. A Troop Commander is in touch with the Field Force Commander on a regular basis. The Field Force Commander does not keep close tabs on the daily functions of a troop.

27. Hiring civilian employees is generally a joint decision of the Troop Commander and Station Commander.

28. Each of the 11 State Police stations is headed by a Station Commander, which is a Sergeant's position.

29. Each Station Commander is responsible for the State Police activity in the geographic area of his station. He is a direct supervisor of Patrol Commanders (Corporals), civilian employees (clerk-dispatchers), and employees of outposts in the station's geographic area.

30. Patrol Commanders are in charge of the shift they're assigned to and may make up work schedules of Troopers under their command. Alternatively, the Station Commander may assign specific tasks to Troopers.

31. Station Commanders prepare performance evaluations on the Patrol Commanders and clerk-dispatchers. The Patrol Commanders prepare performance evaluations on Troopers.

32. Much of the work performed by a Station Commander's subordinates is self-assigning (e.g. receiving and channeling complaints, investigating complaints, responding to traffic accidents). Accordingly, much of the day-to-day control over a station exercised by its Commander is routine.

33. Station Commanders exercise independent judgment in preparing performance evaluations and responding to problems arising that need immediate attention.

34. Station Commanders serve as acting Troop Commanders on weekends.

35. When a Station Commander is absent from the station, Patrol Commanders run their own shift, and a day shift Corporal takes care of the required paperwork. If the Station Commander is absent for an extended period, a senior Corporal may be designated acting Station Commander by the Commissioner.

36. In disciplinary matters involving civilian employees, Station Commanders have the authority to impose discipline up to the level of a written reprimand, but, generally, do not do so until after consulting with the Troop Commander. If more severe discipline is warranted, the Commissioner would decide the appropriate degree of discipline, and would himself impose it. In such instances, the Commissioners may or may not seek input from Station Commanders.

37. If a Station Commander wishes to commend a civilian employee, or to recommend that such employee receive a merit pay award, he would send such recommendation to the Commissioner through the chain-of-command

38. Station Commanders hear Step I grievances of civilian and uniformed employees of their respective stations. Some grievances are resolved at this level.

CRIMINAL DIVISION

39. The Criminal Division is the second of the three major parts of the State Police organization, and is headed by a Captain (Commander, Criminal Division). The division is further divided into three main parts: Fire Investigation Unit, Criminal Investigation Unit, and Special Investigation Unit (Exhibit 1, pg. 22).

40. The Fire Investigation Unit is headed by the Chief Fire Investigator, a Lieutenant, who reports directly to the Commander, Criminal Division. The Chief Investigator supervises eight fire investigators, all of them State Police Corporals. The Chief trains investigators, maintains daily contact with them, assures all investigations are followed-up completely by investigators and reviews investigators' reports to determine if further leads can be developed. The Chief Fire Investigator also has frequent contact with fire departments throughout the State, develops and organizes training sessions for fire personnel in arson detection, prepares an annual report on all fires in the State causing over \$200 damage and sends the report to all local fire departments, and is involved with obtaining grants for the purpose of training and centralized reporting (Exhibit 1, pg. 22, Exhibit 12).

41. The Special Investigative Unit (SIU) is divided into sub-units: Drug Investigation Unit, Criminal Intelligence Unit, Governor's Security Detail, and Fraud Investigation Unit (Exhibit 1, pg. 22, Exhibit 20).

42. The entire SIU is headed by the Chief, SIU, who reports directly to the Commander, Criminal Division. The SIU chief, a Lieutenant, is responsible for the effective and efficient operation of the sub-units and keeps the Commander advised of criminal activity trends throughout the State. He further assures proper liaison with other law enforcement agencies both within and outside the State. The chief directly supervises the SIU supervisor, a Sergeant, and has contact with him on a daily basis (Exhibits 14, 20).

43. The SIU supervisor is responsible for coordinating the work of all sub-units and is responsible for their performance. He is the immediate supervisor of five Corporals and two Troopers. The supervisor decides the daily placement of subordinates and supervises the investigation of drug abuse activity and major frauds, planning of security for the governor, and the implementation and updating of both present and future policies regarding the intelligence files (Exhibit 20).

44. The Bureau of Criminal Investigations (BCI) is comprised of 35 positions - one Lieutenant, six Sergeants (five Detective Sergeants, and one Polygraph Supervisor), 25 Corporals (22 Detective Corporals, and three Polygraph Examiners), and one Track Security Trooper (Exhibit 1, pgs. 22-27).

45. The BCI is headed by the Chief, Criminal Investigations, a Lieutenant, who reports directly to the Commander, Criminal Division. The Chief directs the major criminal investigation activities of the Department. He is immediately informed of all major crimes under State Police Jurisdiction, and makes instant assessment, when necessary, to

determine personnel and equipment needed in an investigation. The Chief is the immediate supervisor of five Detective Sergeants and one Polygraph Supervisor, and has frequent contact with them. The Chief coordinates and instructs schools on criminal investigative procedures and coordinates BCI's activities with other Department units (Exhibits 10, 21, 24).

46. The five Detective Sergeants are assigned geographic areas in the State. The Sergeants supervise the Detective Corporals assigned to them. The Sergeants direct the work of Corporals to ensure thorough investigation of major criminal activity. The Sergeants are in charge of crime scenes and have the responsibility of seeing that physical surroundings are thoroughly examined and the evidence properly handled. The Sergeants review all reports submitted by Corporals and conduct their performance evaluations (Exhibit 21).

47. The Sergeant who serves as Polygraph Supervisor is the supervisor of three Corporals assigned as Polygraph Operators. He ensures that a high level of proficiency is maintained in polygraph examinations through the use of a quality control system, training, and daily supervision. He directs subordinates as to proper procedures and applicable law (Exhibit 24).

SUPPORT SERVICES DIVISION

48. The Support Services Division is one of the three divisions of the State Police. It is headed by a Commander, a Captain, and is comprised of a Training and Community Relations Unit, a Communications Unit, the Vermont Criminal Information Center, and the State Police Crime Laboratory (Exhibit 1, pg. 28).

49. The Training and Community Relations Unit is headed by a Director, Lieutenant Edward Fish. Previously, Fish, as a Lieutenant, served as Troop Commander and Assistant Field Force Commander. Fish reports directly to the Commander, Support Services Division.

50. Lieutenant Fish, like all other Lieutenants in their respective positions, is limited in his discretion by the strong chain-of-command. Fish may provide input on policy decisions, but cannot make policy. Rather, he carries out policy which is made at higher levels, and which come down to him through the chain-of-command. For example, Fish has been unable to streamline the recruiting and hiring process because his superiors have not approved it.

51. Fish has no active role in budgetary matters. The budget for his division is established by superiors, and his only role is to furnish them with a statement of needs. Fish has no fiscal control over the administration of the budget. It is the Captain's responsibility to manage the division within budgeted amounts. For example, Fish is unaware how much money he has for training unless he asks his superiors. This lack of budgetary responsibility has been Fish's experience in all positions he has held as Lieutenant.

52. The Training and Community Relations Unit has two components, a Training component and a Community Relations component.

53. Two Sergeants are assigned to the Training component (as Supervisors of Instruction) and one Sergeant is assigned to the Community Relations component (as Supervisor of Community Relations). Fish is the immediate supervisor of the three Sergeants.

54. The training component is responsible for the training of recruits (to a degree) as well as in-service training of members of the State Police.

55. When State Police recruits are hired, they are required to go through a one-week orientation and, then, 10-week basic training at the Vermont Police Academy in Pittsford. They then go out into the "field" for about four months, at the conclusion of which they undergo three to four weeks of advanced basic training. Recruits serve a one-year probationary period.

56. Lieutenant Fish's "shop" is 100 percent responsible for recruits' one-week orientation training. The 10-week basic training is the sole responsibility of the Law Enforcement Training Council, and Lieutenant Fish's personnel have no role. However, they do have about 40 percent of the responsibility for the advanced basic training received by recruits (with the other 60 percent responsibility shared by the BCI Division and other agencies).

57. Sergeant James Patten, one of the Supervisors of Instruction, is responsible for the recruit training aspects of Fish's "shop".

58. The one-week orientation training for recruits is conducted under the supervision of Sergeant Patten, and takes place at Stanley Hall (the State Training Center), Waterbury, Vermont. During that week, recruits and Patten spend their nights at the Training Center. Recruits report directly to Sergeant Patten during the week of orientation training, and Patten directs them in their activities.

59. The advanced phase of recruit training is also conducted under Sergeant Patten's supervision.

60. In Patten's experience, no recruit has exhibited negative behavior requiring disciplinary action. If such an occasion arose, Patten would consult with Lieutenant Fish before recommending discipline.

61. Members of the Vermont State Police must receive 25 hours of in-service training per year. Sergeant Goodnow, the other Supervisor of Instruction, and the one Corporal assigned to training duties are assigned to this aspect of training duties. The Corporal is directly under Sergeant Goodnow's supervision. Sergeant Patten assists in in-service, but has no supervisory authority over the Corporal.

62. In-Service training is conducted at the 11 State Police stations in Vermont. The instruction is provided by members of the Training staff, by officers assigned to the Criminal Division or Field Force Division of the State Police, and, occasionally, by others with expertise in a particular field. If a State Police member is temporarily assigned to be an instructor at in-service training, there is no break in the normal chain-of-command. No employee of the Training component would exercise supervisory authority over him.

63. One Sergeant and two Corporals are assigned to the Community Relations component of the Training and Community Relations Unit.

64. Community Relations is important because it represents the only positive contact most people have with the State Police (i.e., not at a crime or accident scene).

65. Lieutenant Fish's and the Sergeant's primary functions are to coordinate the Community Relations program, although they each, on occasion, do give presentations to members of the public. Most of the presentations to groups are made by the two Corporals assigned to

Community Relations, and by members of the Field Force Division who are assigned to the various stations around the State. The Sergeant supervises and directs the two Corporals in their presentations (Exhibit 29).

66. The Vermont Criminal Information Center is the official State depository for all criminal records. The Director of the Criminal Information Center is a State Police Sergeant who supervises the work of six civilian employees: a civilian clerk, four typists, and one fingerprint technician. The Sergeant reports directly to the Commander, Support Services Division (Exhibit 1, pg. 28, Exhibit 22).

67. The Communications Unit is headed by the Communications Officer, a Lieutenant. The unit is responsible for the design, operation, and maintenance of all communications systems (i.e., radio, telephone, data) in the State Police. The Communications Officer prepares plans for the design and operation of various communications systems, writes operational manuals, conducts training programs, and develops programs to meet the Agency's communications requirements. He reports directly to the Commander, Support Services Division (Exhibit 18).

68. Ten civilian employees work under the Communications Officer. He is the immediate supervisor of two of them, a Communications Supervisor and a Communications Coordinator. Eight Communications Technicians are supervised by the Communications Supervisor (Exhibit 1, pg. 28, Exhibit 18).

69. The State Police Crime Laboratory is headed by a Director, a Lieutenant, who reports directly to the Commander, Support Services Division.

70. The Forensic Laboratory Supervisor, a Sergeant, supervises Crime Laboratory staff [four Corporals (two fingerprint examiners and two firearms examiners) and three civilian chemists] in all aspects of the day-to-day operations of the Crime Laboratory. Duties include workload and case priorities, scheduling of instruction for State Police in-service sessions, and periodic evaluation reports of subordinates. The incumbent also supervises and is a member of a highly-trained Crime Scene Search Team, which maintains an around-the-clock response service for collection and preservation of evidence. The Forensic Laboratory Supervisor reports to the Director who conducts periodic evaluations, observations, and reviews of the supervisor's work (Exhibit 27).

INTERNAL AFFAIRS UNIT

71. The Internal Affairs Unit has only one full-time employee, a Commander. The present Commander is Lieutenant Truman Way. The normal assignment to that position is for a two-year period. Way has the services of a secretary available to him on a part-time basis.

72. Unlike all other Lieutenants, the Commander of Internal Affairs reports directly to the Commissioner. The Commissioner writes the performance evaluation of the Commander.

73. The Commander is charged with the responsibility of investigating all allegations of improper conduct and misconduct made against members of the Vermont State Police, and to report the results of the investigation to the Commissioner, who then, in his sole discretion, decides whether to impose discipline on the offending member.

74. In instances where serious misconduct is alleged, the Commander generally does the investigation himself. In less serious misconduct or improper conduct cases, the Commander delegates investigative responsibility to a State Police member. In most cases, the Commander acts as a coordinator, not the investigator. If a member is assigned to investigate, he comes under the Commander's supervision for the period of his assignment. The Commander may have six to seven members under his supervision at any one time.

75. In an investigation, the Commander and delegate do not have access to the accused member's entire personnel file, but just information relating to the specific incident.

76. Final responsibility for coordinating and presenting the facts of an investigation falls on the Commander.

77. When an investigation is completed (whether it is conducted by the Commander or his delegate), a report of the investigation is sent through the offending member's chain-of-command to the latter's immediate superior, then, after such superior has read it, sent back through the chain to the Commander, Internal Affairs Unit. Members in the offending member's chain-of-command are allowed to comment on the facts brought out by the investigation, but rarely make actual recommendations concerning disciplinary action. After the Commander receives the investigation report back, he then gives it to the Commissioner for his decision concerning whether or not to prefer charges against the offending member.

78. As Commander, Lieutenant Way consults frequently with the Commissioner. When an allegation of misconduct is made, Way immediately informs the Commissioner, and the two may discuss how the investigation

will be handled. However, no information exchanged between Way and the Commissioner is confidential. In any case, the accused member and his supervisor are aware of all the facts.

79. Way is not consulted and has knowledge of no confidential information relating to labor relations matters, and he is not involved in collective bargaining strategy.

PUBLIC SAFETY REGISTRATION UNIT SUPERVISOR

80. The Public Safety Registration Unit is responsible for the issuance of licenses for motorboats, snowmobiles, and handlers of certain regulated explosives.

81. Felix Sawicky, a civilian employee, holds the position of Unit Supervisor. He directs the work of two subordinates, a Clerk B and a Typist B. Sawicky supervises and personally assists in the processing of both mail and walk-in requests for licenses. It is his responsibility to ensure scheduling and work-flow problems are corrected to achieve timely issuance of licenses and creation of proper control records (Exhibit 1, pg. 3, Sawicky Exhibit 1).

82. Sawicky reports to Ted Nelson, Business Manager. Nelson is not located in the same building as Sawicky and his subordinates. Nelson follows Sawicky's recommendations relating to administration of the unit.

83. Sawicky recommended the existing clerk and typist be hired; the Commissioner approved the recommendation. Sawicky trains the staff and does their performance evaluation. Sawicky has handled any disciplinary problems that have arisen informally. Serious disciplinary action (ie. suspension, dismissal) has been required in no instance. If it was, Sawicky would take no action without Nelson's and the Commissioner's approval.

OPINION

MOTION TO DISMISS

VSEA asserts the Board has no jurisdiction to determine the designation of State Police members. VSEA argues State Police are not in the classified service for purposes of personnel designations; and thus, the Board has no jurisdiction under 3 VSA §906 to determine their designations.

3 VSA provides:

The Commissioner of personnel shall determine those positions in the classified service whose incumbents he believes should be designated as managerial, supervisory or confidential employees. Any disputes arising therefrom shall be finally resolved by the Board.

3 VSA §311 defines "classified service". Subsection (b) of that section provides as follows:

Positions in the uniformed state police within the department of public safety shall be deemed to be within the classified service for purposes of job evaluation and assignment of position classes to salary range only, and not otherwise.

The terms "job evaluation" and "class", as used in that section, are defined in 3 VSA §323 as follows:

"job evaluation" means the systematic method used to determine the value of each job in relation to other jobs within the state service.

"class" means one or more positions sufficiently similar in nature, scope and accountability that the same title, test of fitness and schedule of compensation may be applied to each position.

Designation of positions as managerial, supervisory, or confidential does not fall within the definition of job evaluation, and does not constitute assignment of position classes to salary range. Thus, without considering any other statutory provisions, the VSEA assertion seems to be supported.

The State argues, however, that 3 VSA §1004 indicates the Legislature intended the provisions of the entire State Employees Labor Relations Act (SELRA), including 3 VSA §906, to apply to State Police. 3 VSA §1004 provides:

The provisions of this Chapter shall apply to the State Police in the Department of Public Safety except for matters of disciplinary action, transfer or suspension and those items specifically covered by statute.

In resolving this conflicting statutory language, we look to other statutory provisions to determine the intent of the Legislature in such matters. State Police are included within the definition of State employee for purposes of protection under SELRA. 3 VSA §902(5). 3 VSA §902 (16)(17) and (18) provides the designation of a State employee as managerial, confidential, and supervisory is "finally determined by the Board". Clearly, the Legislature intended the Board to determine the managerial, confidential or supervisory status of all State employees, including State Police.

There is no statutory provision providing designations of State Police will be handled differently than other State employees. Absent an alternative procedure "specifically covered by statute" pursuant to 3 VSA §1004, we believe the procedure provided in 3 VSA §906 applies to State Police. As a practical matter, if the procedure provided in §906 is not followed, there is no way for the Board to fulfill its statutory responsibility to determine the designations of State Police positions.

DESIGNATIONS OF LIEUTENANTS AND SERGEANTS

The Commissioner of Personnel designated 11 of the 12 State Police Lieutenant positions as managerial. 3 VSA §902(18) defines managerial employee:

"Managerial Employee" is an individual finally determined by the board as being in an exempt or classified position which requires him to function as an agency, department or institution head, a major program or division director, a major section chief or director of a district operation.

The State contends the Lieutenants serve as either major program or division directors, or major section chiefs. We disagree. All the Lieutenants lack discretionary authority in three central areas of management: budget administration, personnel administration, and policy matters.

The Lieutenants have no control over the administration of the budget in their area of responsibility; it is their superiors' responsibility to manage within budgeted amounts. In personnel administration, Lieutenants' authority is severely limited since they cannot discipline State Police members. Disciplinary action can only be taken by the Commissioner. In policy matters, Lieutenants may provide input but they cannot make policy. Policy is set by higher-ups; and there are extensive procedures for nearly all aspects of State Police work. The importance of the chain-of-command in the State Police results in the "chiefs" and "directors" of the organization's components being concentrated at the top of the organization. The Commissioner, Major, and Captains are the managers of the various components.

We also disagree with the Commissioner of Personnel's designation of the remaining Lieutenant position, Internal Affairs Unit Commander, as confidential. Confidential employee is defined in 3 VSA §902(17) as:

...an employee finally determined by the Board as having responsibility or knowledge or access to information relating to collective bargaining, personnel administration or budgetary matters that would make membership in or representation by an employee organization incompatible with his official duties.

The State contends the duties of the Internal Affairs Commander, Truman Way, impact on the personnel administration of the Department of Public Safety to such a degree that it would be unfair and unwise to include the incumbent of the position within the collective bargaining unit. We do not find Lieutenant Way has responsibility or knowledge or access to information relating to personnel administration that would make representation by an employee organization incompatible with his official duties. Way is responsible for investigating allegations of improper conduct and misconduct and reporting the results to the Commissioner. In so doing, no information Way obtains, and no information exchanged between Way and the Commissioner, is confidential. The accused member and his superiors in the chain-of-command are aware of the results of the investigation as reported by Way.

We believe all Lieutenants and Sergeants are supervisory employees, as defined in 3 VSA §902(16):

"Supervisory employee" means an individual finally determined by the board as having authority in the interest of the employer to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, or discipline other employees or responsibility to direct them or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature but requires the use of independent judgment.

In order to be considered a supervisor, an employee must pass two tests: 1) the possession of any one of the listed powers in the statutory definition; and 2) the exercise of such powers "not of a merely routine or clerical nature but requiring the use of independent judgment".

Firefighters of Brattleboro, Local 2628 v. Brattleboro Fire Department, Town of Brattleboro, 138 Vt. 347 (1980. Vermont State Hospital Personnel Designation Disputes, 5 VLRB 60 (1982).

Based on the evidence before us, we find the Lieutenants and Sergeants pass both tests. Although their degree of supervisory authority differs, they all have responsibility to direct other employees in the performance of their work, and the exercise of such authority requires the use of independent judgment.

We note that the occupants of the following three positions have immediate supervisory responsibility over only one employee: 1) Chief, Special Investigation Unit (Lieutenant); 2) Director, State Police Crime Laboratory (Lieutenant); and 3) Supervisor of Instruction for In-Service Training (Sergeant). The statute requires an employee have supervisory authority over employees to be considered a supervisor. 3 VSA §902(16). However, we are placing all Sergeants and Lieutenants, including the occupants of the above three positions, in the supervisory unit for two reasons.

First, the State Police is a quasi-military organization where chain-of-command assumes central importance. In such an organization, Lieutenants and Sergeants have practical supervisory authority over all subordinates in the organization.

Second, as a policy matter, it is prudent all Lieutenants and Sergeants be given the same designations as their equals in rank, given the nature of their employment. They work in an organization where all members of the same rank are of equal authority, and each individual is expected to be able to perform the jobs of all individuals of that rank. Throughout a career in the Department, individuals are rotated from position to position within the same rank. A Lieutenant can be transferred to any position occupied by another Lieutenant. A Sergeant can be transferred to any position occupied by another Sergeant. Given such mobility, their job rights could fluctuate greatly if designations of positions differed. For example, a Lieutenant could move from a supervisory position covered by a collective bargaining agreement to a managerial position not covered by a collective bargaining agreement, and then be moved back to a supervisory position. Meanwhile, his rank would not change. To place equals of rank in different bargaining units would be to ignore the unique nature of State Police employment and would result in unsettled labor relations.

DESIGNATION OF PUBLIC SAFETY REGISTRATION UNIT SUPERVISOR

The Commissioner of Personnel designated Felix Sawicky, the occupant of the Public Safety Registration Unit Supervisor position, as a Non-Management employee. Sawicky contends he meets the definition of a supervisor.

We believe Sawicky is a supervisor. He has the authority to assign and direct the two employees under him. That this authority is not of a merely routine or clerical nature but requires the use of independent judgment is indicated by his effective responsibility to ensure scheduling

and work-flow problems are corrected to achieve timely issuance of licenses issued by his Unit and creation of proper control records. To achieve this desired end, Sawicky must exercise independent judgment in assigning work to subordinates and directing their activities. This is particularly true since his superior, the Business Manager, leaves administration of the Unit under Sawicky's control.


ORDER

Now, therefore, based on the foregoing findings of fact and for all the foregoing reasons, it is hereby ORDERED:

- 1) The designations of the Commissioner of Personnel in the the Department of Public Safety, making one State Police Lieutenant's position, Internal Affairs Unit Commander, confidential, pursuant to 3 VSA § 902 (17), and the remaining Lieutenants managerial employees, pursuant to 3 VSA §902 (18) are REVERSED. They are supervisory employees as defined in 3 VSA §902 (16) and shall become members of the supervisory unit;
- 2) The designations of the Commissioner of Personnel in the Department of Public Safety, making State Police Sergeants supervisory employees pursuant to 3 VSA §902 (16) is AFFIRMED, and they are placed in the supervisory unit; and
- 3) The designation of the Commissioner of Personnel in the Department of Public Safety, making Felix Sawicky, Public Safety Registration Unit Supervisor, a Non-Management employee is REVERSED. He is a supervisory employee and shall become a member of the supervisory unit.

Dated this 19 day of May, 1982, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD


Kimberly B. Cheney, Chairman


William G. Kemsley, Sr.


James S. Gilson